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such payments, on the advice of the court, such discontinuance was not malfeasance in office.

[Ed. Note.—For other cases, see *Insane Persons*, Cent. Dig. §§ 108, 110-114; Dec. Dig. § 65.* 7 Va.-W. Va. Enc. Dig. 691.]

4. Insane Persons (§ 54*)—Committees—Expenditures.—Where an insane person was worth a quarter of a million, reasonable expenditures for the operation and upkeep of an automobile and a boat for the insane person's use, and of a trip to a winter resort in Florida, were proper.

[Ed. Note.—For other cases, see *Insane Persons*, Cent. Dig. §§ 76, 86; Dec. Dig. § 54.* 7 Va.-W. Va. Enc. Dig. 691.]

5. Insane Persons (§ 38*)—Acts of Committee—Failure to Institute Suit.—Evidence held to warrant a finding that the failure of a lunatic's committee to sue to set aside a deed to his younger son, four months before the lunatic was adjudged incompetent, was not nonfeasance warranting his removal.

[Ed. Note.—For other cases, see *Insane Persons*, Cent. Dig. §§ 57, 58, 60; Dec. Dig. § 38.* 7 Va.-W. Va. Enc. Dig. 694.]

6. Insane Persons (§ 38*)—Committee—Removal—Suit in Equity—Right to Sue.—There being an adequate remedy at law under the statute for the removal of a lunatic's committee for incompetency or malfeasance in office, the lunatic's children have no capacity to sue in equity for such relief.

[Ed. Note.—For other cases, see *Insane Persons*, Cent. Dig. §§ 57, 58, 60; Dec. Dig. § 38.* 7 Va.-W. Va. Enc. Dig. 694.]

Appeal from Circuit Court, Elizabeth City County.

Proceedings by J. B. Lake, Jr., and others to remove J. Wilton Hope, as committee of J. B. Lake, Sr., lunatic, and suit by J. B. Lake, Jr., and others against J. Wilton Hope, as committee, and others, for similar relief. From a decree in favor of defendants in each case, plaintiffs appeal. Affirmed.

S. Gordon Cumming, of Hampton, *Meredith & Cocke*, of Richmond, and *J. Winston Read*, of Newport News, for appellants.

R. M. Lett, of Newport News, and *S. J. Dudley*, of Hampton, for appellees.

KIRKBRIDE et al. v. KEYS PLANING MILL CO.

Sept. 7, 1914.

[82 S. E. 750.]

1. Appeal and Error (§ 1099*)—Opinion on Former Appeal—Construction.—The language of the opinion on a former appeal, on which it was held that exceptions were improperly sustained to the answer,

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

and the case was remanded for determination on the pleadings and proof, that "it does not seem to us that the receipt or release * * * is sufficiently clear in its terms to have warranted * * * construing it as a release on its face" of certain money, was not a holding that the instrument was a receipt, but merely that it did not conclusively show on its face that it was a release, and that whether it was the one or the other was to be determined in the light of the circumstances surrounding the transaction when the writing was executed.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4370-4379; Dec. Dig. § 1099.* 1 Va.-W. Va. Enc. Dig. 537, 650.]

2. Evidence (§ 462*)—Parol Evidence—Release or Receipt.—An instrument not clearly showing whether it is a mere receipt, or is contractual in its character and is a release, the circumstances surrounding its execution may be shown.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 2134-2139; Dec. Dig. § 462.* 10 Va.-W. Va. Enc. Dig. 715.]

3. Release (§ 57*)—Evidence—Receipt.—The circumstances attending the execution by C. of an instrument reciting that, in consideration of the conveyance of certain lands by K., C. doth hereby release and cancel the indebtedness of a certain amount, due by K. to C., held to show it to be not a mere receipt, or admission that the said debt had been paid or satisfied, but contractual in its character and a release.

[Ed. Note.—For other cases, see Release, Cent. Dig. §§ 106-108; Dec. Dig. § 57.* 11 Va.-W. Va. Enc. Dig. 791.]

4. Release (§ 57*)—Mutual Mistake—Evidence.—There is insufficient evidence of a mutual mistake in including a certain item in a release of debt, only two witnesses pretending to know what the agreement was, and their testimony being in conflict thereon.

[Ed. Note.—For other cases, see Release, Cent. Dig. §§ 106-108; Dec. Dig. § 57.* 11 Va.-W. Va. Enc. Dig. 796.]

5. Payment (§ 74*)—Receipt—Burden of Proof.—Even if an instrument, reciting that in consideration of the conveyance of certain lands by K., C. releases and cancels the indebtedness, of a certain amount, due by K. to C., be considered a mere report, and not a release, it is prima facie evidence that the conveyance was in full satisfaction of said indebtedness, putting on C. the burden of showing that it was not in satisfaction of a certain item of it.

[Ed. Note.—For other cases, see Payment, Cent. Dig. §§ 138, 139, 226-231; Dec. Dig. § 74.* 11 Va.-W. Va. Enc. Dig. 118.]

6. Payment (§ 74*)—Receipt—Evidence to Overcome Burden.—

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

The burden of overcoming the prima facie evidence, which an instrument, considered as a receipt, constituted, that the consideration of a conveyance of land by K. to C. was full satisfaction of the entire recited debt of K. to C., held not sustained.

[Ed. Note.—For other cases, see Payment, Cent. Dig. §§ 138, 139, 226-231; Dec. Dig. § 74.* 11 Va.-W. Va. Enc. Dig. 117, 118.]

Appeal from Circuit Court, Tazewell County.

Controversy between T. W. Kirkbride and another and the Keys Planing Mill Company. From a decree for the company, appeal is taken. Reversed and rendered.

Henson & Bowen, of Tazewell, for appellants.

Henry & Graham & Hawthorne, of Tazewell, for appellee.